SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
JUDGE W.J. KEARNEY

OCEAN COUNTY COURTHOUSE
C.N. 2191
TOMS RIVER, N.J. 08753

April 2, 1981

Gelzer & Kelaher, Esqs.
CN 2028
Toms River, New Jersey 08753

Mr. Lawrence M. Johmann
60 Bowline Street
Beachwood, New Jersey 08722

Re: Johmann v Johmann
Docket No. M-28346-78

Gentlmen:

With reference to the above captioned matter, please be advised as follows:

1. Divorce is granted to plaintiff for extreme cruelty, consisting basically of an attitude of the husband apparent to the Court, best characterized as obsessive-compulsive. This personality, in conjunction with the personality of the wife, constitutes extreme cruelty. If this case had ended more quickly, and if fewer papers had been filed

by the defendant, appearing pro se, this might well have escaped the notice of the Court. This is a true Gazzilla case.

2. Custody in granted to the plaintiff. Unspecified liberal visitation is allowed.

3. Counsel fees in the amount of $1,500.00 are allowed to plaintiff's attorney to be paid by the defendant. Defendant's application is denied. Defendant is also to pay the outstanding bill of Dr. Isseroff in the amount of $200.00 and the appraisal bill of Potter & Taylor in the amount of $75.00.

4. Plaintiff shall have the right to remain in the marital domicile with the children. The house is to be sold when the wife remarries or the youngest child is emancipated and the net proceeds shall be equally divided between the parties. The household furnishings shall remain with the house and be sold or divided when the house is sold so that each has an equal share.

5. Automobiles:

The 1980 VW to the husband.

The 1975 VW to the wife.

6. Any and all bank accounts or certificates of deposit are to be equally divided between the parties.

7. All stocks, except Lockheed, are to be divided equally. Lockheed stock to go to the husband.

8. Insurance policies shall remain the property of the husband with wife beneficiary as trustee for the children.

9. The defendant shall maintain in effect the present hospitalization and medical insurance through his employment for the benefit of the children. In the absence of such insurance, defendant shall be responsible. If possible, such policies shall also cover the plaintiff.

10. The defendant shall pay child support of $50.00 per week per child and, for a period of three (3) years, the sum of $100.00 per week as rehabilitative alimony.

11. No provision is made as of this time for future educational expenses.

The basis for the 50-50 split was arrived at by considering all factors including the unusually large contribution brought to the marriage by the defendant and the unusual difficulties faced by the plaintiff in having left her home and familiar surroundings to enter the marriage.

Mr. Shea will prepare the order and submit to the Court on the five day rule.

Exhibits may be picked up at my office.

Very truly yours,

WILLIAM J. KEARNEY, J.S.C.

WJK:mm

GELZER & KELAHER
A Professional Corporation
Attorneys for Plaintiff
CN 2028
Toms River, New Jersey 08753
Telephone: 201-349-1212

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION, OCEAN COUNTY
DOCKET NO. M-28346-78

EVELINE JOHMANN,

Plaintiff,

-vs-

LAWRENCE JOHMANN,

Defendant.

Civil Action

FINAL JUDGMENT FOR DIVORCE

This matter coming to be heard in the presence of Gelzer & Kelaher, attorneys for the plaintiff, (Robert C. Shea, Esq. appearing) and Lawrence Johmann appearing pro se, and the Court having heard and considered the Complaint and proofs, and it appearing that the plaintiff and defendant were married and the plaintiff having pleaded and proved a cause of action for divorce under the statute in such case made and provided, and the plaintiff has been a bona fide resident of

this State for more than one year next preceding the commencement of this action, and jurisdiction having been acquired over the defendant pursuant to the Rules Governing the Courts.

It is this 28th day of April, 1981 ORDERED and ADJUDGED that pursuant to the statute in such case made and provided, that the marriage between the parties is hereby dissolved. On the Complaint and the Counterclaim.

It is further ORDERED as follows:

1. The Plaintiff shall have custody of Lawrence Johmann, Jr. and Brian Johmann, the infant children born to the marriage.

2. Defendant shall have reasonable rights of visitation with the infant children of the marriage.

3. Defendant shall pay child support of $50.00 per week per child.

4. Defendant shall pay to the Plaintiff for a period of three (3) years the sum of $100.00 per week as rehabilitative alimony.

5. Plaintiff shall have the right to remain in the marital domicile with the children. Defendant is ordered to vacate the premises immediately. The said house is to be sold when the wife remarries or the youngest child is emancipated and the net proceeds shall be equally divided between the parties. The household furnishing shall remain with the house and be sold or divided when the house is sold so that each has an equal share.

6. Defendant shall retain ownership of the 1980 Volkswagen Rabbit. Plaintiff shall be the sole owner of the 1975 Volkswagen Rabbit.

7. Defendant shall maintain in effect present hospitalization and medical insurance through his employment for the benefit of the children. In the absence of such insurance, defendant shall be responsible. If such hospitalization and medical insurance is in effect, such policies shall also cover the plaintiff.

8. All stocks, except Lockheed, are to be divided equally. Lockheed stock is to go to the defendant. More specifically, Perkin-Elmer Corp. stock, such stock approximating $2,400.00, shall be divided equally.

9. United States Savings Bonds in the amounts approximating $1,250.00 shall be divided equally between the parties.

10. The Savings Account at Lockheed Electronics approximating $4,000.00, shall be divided equally between the parties.

11. Lockheed Federal Credit Union account, with an approximate balance of $2,000.00, shall be divided equally between the parties.

12. Any and all additional bank accounts or certificates of deposit are to be divided equally between the parties.

13. The 1980 Internal Revenue Service refund or homestead rebate shall be divided equally between the parties.

14. Defendant shall pay counsel fees in the amount of $1,500.00 to plaintiff's attorneys, Gelzer & Kelaher.

15. Defendant's application for services is denied.

16. Defendant shall also pay the outstanding bill of Dr. Avraham Isseroff in the amount of $225.00 and the appraisal bill of Potter & Taylor in the amount of $75.00.

WILLIAM J. KEARNEY, J.S.C.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-3887-80T1

EVELINE G. JOHMANN

PLAINTIFF-RESPONDENT

v.

LAWRENCE M. JOHMANN

DEFENDANT-APPELLANT

Argued March 16, 1982 Decided March 30, 1982

Before Judges Botter and Antell.

On appeal from Superior Court, Chancery Division, Ocean County.

Lawrence M. Johmann, pro se, argued the cause for appellant.

Robert C. Shea argued the cause for respondent (Gelzer & Kelaher, attorneys; Mr. Shea, on the brief).

PER CURIAM

On this appeal from a divorce judgment entered on April 28, 1981, defendant contests (1) the award to plaintiff of custody of the two sons of the marriage who were 4 and 12 years old in 1981, rather than awarding, at the least, joint custody; (2) the equitable

distribution of property which defendant contends was unreasonable and included assets of defendant acquired prior to the marriage which should have been excluded from distribution; (3) the award of alimony and child support which defendant contends was excessive in view of plaintiff's misconduct, perjury and fraud on the court, and (4) the award of counsel fees to plaintiff when, instead, defendant should have been given compensation for his expenses. In his brief plaintiff also asserted that a judgment of divorce should not have been entered in favor of plaintiff on the ground of defendant's alleged marital wrongdoing and cruelty. (The judgment of divorce dissolved the marriage based upon plaintiff's complaint and defendant's counterclaim.) At oral argument, however, appellant withdrew his attack upon the divorce judgment, indicating that at this time contesting the divorce would serve no useful purpose.

With respect to custody of the children, there is ample support in the record for the award of custody to plaintiff. In his written opinion the trial judge adopted the evaluation of defendant's personality by the court-appointed psycniatrist, which, we infer, contributed to the judge's conclusion on the issue of custody. The psychiatrist's evaluation strongly favored the choice of plaintiff as the custodial parent, with liberal visitation afforded to defendant. He concluded that joint custody would be "out of the question, as Mr. Johmann does not appear to be able to work in a reasonable way with his wife." On the record before us, we find no basis for disturbing the conclusion reached by the trial judge as to custody.

The award of child support of $50 per week for each child and rehabilitative alimony at the rate of $100 per week for three years appears reasonable and appropriate in the light of defendant's income and the cir-

cumstances of the parties. On the record before us we conclude that these provisions should be upheld.

The award of counsel fees is reasonable and appropriate in this case. Contending that plaintiff's attorneys had already received $2500 toward counsel fees, defendant relies on transcripts of a telephone conversation between plaintiff and Deborah Bush (whose mother is defendant's cousin, according to defendant's affidavit), and a telephone conversation between plaintiff and her attorney. These conversations were apparently recorded by defendant without plaintiff's knowledge. The conversations suggest that moneys were loaned to plaintiff to be placed in a savings account in trust for plaintiff as security for payment of counsel fees. The telephone conversations makes it clear that plaintiff did not have the money to pay her own counsel fees and was unwilling to accept gifts even from defendant's relatives in

order to enable her to obtain a divorce from defendant. The conversation with Mrs. Bush clearly refutes defendant's contention that plaintiff wanted to dissolve the marriage "for her own selfish purposes and financial gain." Contrary to defendant's assertions that plaintiff resorted to "criminal acts of perjury, fraud, slander, assault, barratry, and conspiracy," the conversation indicates a sincere concern for plaintiff's welfare that was threatened by her continued cohabitation with defendant. In any case, the award of counsel fees was appropriate and reasonable.

With respect to equitable distribution, defendant contends that inadequate consideration was given to the assets which he brought into the marriage. The principal asset is represented by the proceeds of the sale of a house purchased by him before the parties were married which were used largely for the purchase of a second house and a vacant lot adjoining that property. Defendant also con-

tends that part of the furniture in the house was owned by him prior to their marriage. In this respect, the trial judge ordered that the household furnishings would remain in the house and would be sold or divided when the house is sold giving each of the parties an equal share.

Defendant's contention regarding the property brought into the marriage is not adequately answered by the trial judge's opinion or respondent's brief.[1] The trial judge stated:

> The basis for the 50-50 split was arrived at by considering all factors including the unusually large contribution brought to the marriage by the defendant and the unusual difficulties faced by the plaintiff in having left her home and familiar surroundings to enter the marriage.

These findings are inadequate. As stated in Reiser v. Simon, 63 N.J. Super. 297 (App. Div. 1960):

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[1] We are aware of the explanation offered by respondent's attorney at oral arguement.

> ...A trial judge must be explicit in his recital of the evidence and in his factual findings and must so corelate them to his legal conclusions that the ... judgment entered manifestly appears to be undergirded by legal proof of substantial probative value and by specific factual findings thereon. [Id. at 300-301]

Moreover, "[j]udges should always state their reasons so that counsel and an appellate tribunal may be fully informed," McCann v. Biss, 65 N.J. 301, 304, n. 2 (1974). Without adequate findings an appellate court cannot perform the function of deciding whether the determination below is supported by substantial credible proof. Mol v. Mol, 147 N.J. Super. 5, 9 (App. Div. 1977); Kenwood Assocs. v. Bd. of Adj. Englewood, 141 N.J. Super 1, 4 (App. Div. 1976); Harmon v. Harmon, 161 N.J. Super. 206, 211 (App. Div. 1978); Grayer v. Grayer, 147 N.J. Super. 513, 516 (App. Div. 1977).

Accordingly, we are compelled to remand

the case to the trial court for further proceedings on this issue. The court must determine what portion, if any, of the proceeds from the sale of the first house should be excluded from equitable distribution. We are aware, as noted in footnote 1 above, of plaintiff's contention that she contributed to the repayment of moneys used in the purchase of the first house and should, therefore, be considered to have contributed to the acquisition of that asset so as to make the property to which the proceeds were converted, namely, the second house and lot, eligible for equitable distribution. None of this was discussed in the trial judge's decision. We are aware, also, that even if some assets are excluded from equitable distribution, the remainder need not be divided equally. That is to say, the circumstances mentioned by the trial judge of plaintiff having left her homeland to marry defendant might have made her more needy and could

justify a higher allocation of the assets remaining to be divided.[2]

We affirm the judgment below except as to the provisions for equitable distribution. As to that issue, the case is remanded to the trial court for further proceedings, and the trial judge in his discretion may allow the parties to present additional proofs in affidavit or other form. We do not retain jurisdiction.

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[2] We say this not for the purpose of suggesting a result on remand. Rather, our purpose is to indicate to the parties the broad discretion of a trial judge that ought to be taken into account in any negotiations that may take place toward settlement of the dispute, recognizing the high cost of litigation relative to the modest means of the parties.

SUPERIOR COURT OF NEW JERSEY

CHAMBERS OF
JUDGE W.J. KEARNEY

OCEAN COUNTY COURTHOUSE
C.N. 2191
TOMS RIVER, N.J. 08753

June 18, 1982

Gelzer & Kelaher, Esqs.
CN 2028
Toms River, New Jersey
Attention: Robert C. Shea, Esq.

Robert A. Gasser, Esq.
201 Hooper Avenue
P.O. Box 1223
Toms River, New Jersey

Re: Eveline Johmann vs Lawrence Johmann
Docket No. M-23346-78

Gentlmen:

Pursuant to the instructions of the Appellate Division, I solicited from both parties any further proofs they wished to present. Neither party chose to use this opportunity.

The factual setting for the portion of the case remanded is simply stated. Prior to the marriage the defendant husband was the owner

of a house which, by the natural rise of the market and by improvements made, increased in value. In due course, the parties purchased a newer, larger home as tenants by the entirety and were able to arrange the financing for that home without the sale of the first home. Some time thereafter, the original home was sold, title having remained always in the name of the husband only. Some $15,000.00 of the proceeds of the sale were applied to the reduction of the first mortgage on the second house. At the conclusion of the trial I had given no special treatment to this $15,000.00, ruling that the asset contribution by the husband was in some way balanced by the sacrifice made by the wife in leaving her homeland and placing herself in a position where her resources were limited by the lack of familiar surroundings, family and friends.

Plaintiff wife testified that her parents had contributed some five to six thousand dollars to the marriage which

enabled the husband to make the required payments which in turn enhanced the value of the original house. The husband did not deny that contributions were made but questioned the amount. In a matter of this sort the husband was certainly the more reliable and credible witness and I am inclined to accept his version which placed a dollar value closer to $4,000.00. This would appear to be as properly excluded from the marital assets as the husband's house but does not fall into the same category. Since the money was not the property of the wife prior to the marriage it cannot be excluded from distribution.

Since there are no appropriate credits we find the husband making an additional contribution of $15,000.00 to the second house and this amount should be excluded from the distribution to both parties at the time of the sale and given to the husband.
However, the validity of the point I tried to make in a clumsy fashion remains and I direct

that the remaining proceeds from the sale of the house be divided on the basis of 55% to the wife and 45% to the husband because of:

1. Her relative lack of opportunity for financial equality based upon her background, education and resources.

2. The contribution made by her by her tolerance and acceptance of her husbands continuing education over most of the term of the marriage, which education has enabled him to advance and progress within his chosen field to a responsible and good paying position.

3. The probable discrepancy in the future earnings of the parties.

Mr. Shea is requested to draw an appropriate amendment to the final judgment.

Very truly yours,
WILLIAM J. KEARNEY,
J.S.C.

WJK:mm

SUPREME COURT OF NEW JERSEY
C-64 SEPTEMBER TERM 1982

19,820

EVELINE G. JOHMANN

Plaintiff-Respondent,

vs. ON PETITION FOR CERTIFICATION

LAWRENCE M. JOHMANN

Defendant-Petitioner,

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-3887-80T1 having been submitted to this court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 5th day of October, 1982.

Stephen W. Toundsend
Clerk